

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2138 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANUBEN MORARJIBHAI PATEL

Versus

KESRIMAL POKHRAJ SONI

Appearance:

MR DN PANDYA for Petitioner

MR BB DESAI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 08/03/96

ORAL JUDGEMENT

1. Rule. Mr. B.B. Desai waives service of rule on behalf of the respondent. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.
2. The petitioner is the judgment debtor against whom a decree came to be passed in Spl. Civil Suit No.

116 of 1988 dated 15th October, 1991 by Civil Judge, Senior Division, Bharuch. According to her, the decree was an ex parte decree and therefore she moved restoration under Order 9 Rule 13 and for setting aside the ex parte judgment and order for restoring the suit to file and for deciding the suit on merits. Such application however came to be dismissed for want of prosecution as necessary steps required under law were not taken by the judgment debtor. Thereupon she once again filed Misc. Civil Application No. 78 of 1994 for quashing the order passed in earlier MCA and for restoring such MCA on file and she also applied for condonation of delay caused in filing such application. It is such application for condonation of delay which is rejected by the Civil Judge, Senior Division, Bharuch by judgment and order dated 8th March, 1995. It is this order which is under challenge before this Court.

3. Mr. D.N. Pandya, learned Counsel for the petitioner judgment debtor has submitted that sufficient cause which prevented the petitioner from filing the application for restoration of Civil Misc. Application No. 63 of 1991 which was in fact filed within the prescribed period of limitation. The reason which prevented her from filing the application are already stated in the memo of Misc. Civil Application and the trial Court has on taking rather too technical approach of the matter rejected such application by trying to find fault with the petitioner applicant at every stage thereby stating that she ought to have been very vigilant and that she having been found to be negligence or indolent, the delay cannot be condoned.

4. It shall have to be kept in mind that initially application being MCA No. 63 of 1991 was filed by the application immediately i.e. within the prescribed period of limitation and she was vigilant enough to apply to the court for setting aside the ex parte decree and for restoration of the suit to file. However, for reasons beyond her control thereafter, such application came to be dismissed for non-prosecution and when she came to know about such situation, she has filed the Misc. Civil application. In such cases, the liberal view is required to be taken as stated by the Apex court in the case COLLECTOR, LAND ACQUISITION, ANANTNAG vs. MST. KATJIJI reported in AIR 1987 SC 1353. The Supreme Court has laid down the following factors which are required to be kept in mind by the Court while considering the application for condonation of delay.

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a ration common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable or removing injustice and is expected to do so.

In view of the aforesaid and applying the aforesaid facts situation obtaining before this Court, I have no hesitation in holding that the judgment and order passed by the trial court is not sustainable and is required to be quashed and set aside. At the same time when execution of the ex parte decree is sought to be thwarted and when the judgement creditor is not getting the fruit of the decree even after the expiry period of five years, it would be just and proper to put the present petitioner to certain conditions and to reasonable conditions being imposed, Mr. D.N. Pandya, learned Counsel appearing for the petitioner has no objection. In the facts and circumstances of the case, following conditions are imposed.

(i) The petitioner is directed to pay cost of the respondents which is quantified at Rs. 1,500/- within ten days from today.

(ii) The petitioner shall deposit amount of Rs. 15,000/- in the trial court within six weeks and such amount after its deposit in the trial court shall be invested in any nationalised bank by way of fixed deposit receipt for a period of one year initially and the trial court is directed to decide the Misc. Civil Application No. 63 of 1991 on merits as delay caused in filing MCA No. 78 of 1994 is already condoned by this Court for the reasons stated hereinabove and the judgment and order of the trial court is quashed and set aside.

(iii) In case, the aforesaid conditions are not satisfied, the respondent will be at liberty to move this court (before S.D. Shah, J.) for appropriate direction in this Civil Revision Application.

4. Rule is accordingly made absolute to the aforesaid extent only with cost as quantified above.
